

REMARKS

Claims 1-9 are pending in the above-identified application. Support for the substantive change to claim 1 and the change to claim 2 is found at page 11, lines 9-12 of the specification. Support for new claims 9 and 10 is found at page 11, lines 9-12; page 11, lines 17-25; and in the examples, such as Examples 4-6 in Table 5 at page 39 of the specification.

Issues under 35 USC 103(a)

Claims 1-6 have been rejected under 35 USC 103(a) as being unpatentable over Velisek et al. (J. Food. Science, 1991) in view of Carrell '808 (US 5,514,808).

Claims 7 and 8 have been rejected under 35 USC 103(a) as being unpatentable over Velisek et al. in view of Carrell '808 and further in view of Berge (J. Pharmaceutical Sciences, 1977).

These rejections are traversed based on the reasons below.

Interview Conducted with Patent Examiner

An Interview was conducted by Applicant's representative with the Patent Examiner on July 7, 2009. Applicant appreciates the time taken by the Examiner and her Supervisor to conduct the Interview. Interview Summary form states in connection with the substance of the Interview that the Examiner (Abigail Fisher) and her Supervisor (Mina Haghghatian), "Discussed claim limitations that limit the composition to only be a cosmetic composition." Essentially, the Examiner indicated that the most significant issue concerns the distinctions between the present claims and the Velisek et al. reference (Journal of Food Science, volume 56, no. 1, 1991, pp. 139-142). The Examiner stated that the disclosure in column 1 on page 139 of Velisek et al. appears to indicate a relatively high amount of a described chemical hydrolysates that may fall within the content range for the claimed N-glyceryl derivative used in the composition of the present invention which is disclosed to be 0.05 to 20% by weight at page 11 of the specification. These points are specifically addressed below.

Distinctions over Cited References

Velisek et al. is directed to the use of amino acid derivatives, and the identification thereof in protein hydrolysates, in connection with “foodstuffs” or “seasonings for improvement of flavor of many foods” as noted at the end of the abstract and at the beginning of the introduction thereof. This is not surprising as the journal is the “Journal of Food Science”. Regarding the disclosures of the amounts of the various described compounds, Velisek et al. discloses at page 139 that “glutamic acid” is present in an amount “reaching about 15% (dry basis)”; and that, “...the content of 3-chloro-1,2-propanediol [in protein hydrolysates] often reaches several hundred ppm ($\text{mg}\cdot\text{kg}^{-1}$)...” These disclosed amounts do no relate to the described amino acid derivatives, but rather precursors thereof. There is no specific disclosure in Velisek et al. at pages 139-141 of any compositions containing a particular amount of the described amino acid derivatives. However, at page 142, Velisek et al. discloses that hydrolysates treated with 3-chloro-1,2-propanediol and heat can contain up to $10\text{ mg}\cdot\text{kg}^{-1}$ of the described amino acid derivatives. This equates to about 0.001% by weight.

Velisek et al. fails to disclose or suggest a cosmetic composition containing the claimed N-glyceryl derivative as recited in the present claims. Velisek et al. is directed to employment of the described amino acid derivatives in food. The disclosures in Velisek et al. of the amounts of the described amino acid derivatives do not appear to reach significantly above about $10\text{ mg}\cdot\text{kg}^{-1}$ which corresponds to about 0.001% by weight. Further, one skilled in the art would not modify the food-related compositions of Velisek et al. to significantly increase the amount of the described amino acid derivatives by about 50 times, as there is no suggestion to do so. Also, Velisek et al. does not relate to a cosmetic composition which further undermines a basis for modifying the compositions described therein in order to obtain the cosmetic composition of the present invention. Consequently, significant patentable distinctions exist over Velisek et al. such that the rejection based thereon should be withdrawn.

Carrell '808 relates to the use of hydroxyl ions in combination with hydroxyl ion modulating compounds derived from tertiary amines for therapeutic treatment, especially the treatment of wounds.

Carrell '808 fails to disclose any compounds within formula (I) of the present claims directed to cosmetic compositions. For example, Example 8 of Carrell '808 is a tertiary amine which differs from the presently claimed secondary amine compounds of formula (I) of the present invention wherein X is hydrogen. Further, all of the hydroxyl ion modulating compounds disclosed by Carrell '808 are N,N-disubstituted-aminoacetate compounds, with no N-monosubstituted-aminoacetate compounds corresponding to those of formula (I) of the present claims being disclosed. Thus, significant structural distinctions exist between the compounds of formula (I) of the present claims and the compounds disclosed by Carrell '808.

In addition to the above, the compounds of formula (I) of the present claims may be advantageously employed in a cosmetic, such as a cream, in order to provide enhanced moisture absorption, moisturizing effects, gloss, moist feel, smoothness, and combatability (i.e. "combing ease") as evidenced by the test results shown in Tables 1, 4, 6, 8, 10, 12, 16 and 19 in the present specification. Note that these effects may be obtained without requiring alkaline conditions, as all of the examples in the present specification mentioned above were conducted under neutral conditions. In contrast, Carrell '808 discloses the described compounds for use under alkaline conditions. Further, Carrell '808 fails to recognize any of the unexpected, advantageous cosmetic properties noted above with respect to the compounds of formula (I) of the present invention. Consequently, significant patentable distinctions exist between the presently claimed invention and Carrell '808 such that the above-noted rejection must be withdrawn. Further, there fails to be any basis disclosed in Carrell '808 which provides any motivation to one skilled in the art to attempt to obtain the compounds of the present invention.

Carrell '808 cannot be combined with Velisek et al. in view of the significantly inconsistent applications each addresses. Carrell '808 describes compositions used in wound treatments that are clearly not edible, whereas in contrast, Velisek et al. is directed to foodstuffs and food flavor enhancers. There is no evidence in the record to suggest that one skilled in the art would take selectively combine features from compositions used in wound healing and compositions used in consumable food products. Thus, these references cannot be combined, such that the above rejection cannot stand and must be withdrawn.

Berge et al. is cited for its disclosure of pharmaceutical salts. Berge et al. fails to make up for the deficiencies noted above with respect to Velisek et al. and Carrell '808, such that the above rejection including this references still fails and must be withdrawn.

It is submitted for the reasons above that the present claims define patentable subject matter such that this application should now be placed in condition for allowance.

If any questions arise in the above matters, please contact Applicant's representative, Andrew D. Meikle (Reg. No. 32,868), in the Washington Metropolitan Area at the phone number listed below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

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Respectfully submitted,

By 

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